

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE	:	CIVIL ACTION
COMMISSION,	:	
	:	
Plaintiff,	:	NO. 06-4540
	:	
v.	:	
	:	
ONE OR MORE PURCHASERS OF	:	
CALL OPTIONS FOR THE COMMON	:	
STOCK OF CNS, INC.,	:	
	:	
Defendants.	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

October 20, 2006

I. INTRODUCTION

The SEC has brought this action against unknown defendants who purchased call option contracts in CNS, Inc ("CNS") immediately prior to the announcement of the company's acquisition by GlaxoSmithKline plc ("Glaxo") on October 9, 2006. The SEC maintains that these purchases were made based on insider information. Because the purchases were effectuated by accounts located in Switzerland with undisclosed beneficial owners, the SEC does not know the identity of the alleged inside traders.

On October 12, 2006, the Court granted a Temporary Restraining Order (i) freezing certain proceeds generated through the insider trading alleged in the Complaint, (ii) providing for

expedited discovery, (iii) authorizing alternative means for service of process, (iv) requiring defendants to provide identifying information, and (v) prohibiting the alteration or destruction of documents (doc. no. 4) (the "TRO"). The Court described the background of this case and explained its reasons for granting that TRO in an accompanying Memorandum of Law (doc. no. 3), familiarity with which is presumed here.

The SEC now seeks a ten-day extension of the TRO and an order requiring the defendants (also referred to as "Unknown Purchasers") to show cause why the asset freeze and the other ancillary relief requested by the SEC should not remain in place until the conclusion of this litigation.

II. DISCUSSION

Rule 65 of the Federal Rules of Civil Procedure authorizes an extension of the expiry of a temporary restraining order for an additional ten (10) days for good cause shown.

The Court finds that an extension to the TRO order may be granted, without notice to the adverse party, pursuant to Rule 65(b), under these circumstances. The SEC has shown it is still likely to succeed on the merits of its insider trading claims. Moreover, it is still true that immediate and irreparable injury will result before the defendants can be heard in opposition. An extension of the TRO is still required to prevent the defendants from moving the proceeds of the insider trading beyond the

jurisdiction of the Court.

The Court also remains satisfied that the SEC is continuing to make reasonable efforts to serve the defendants in this case. Since this Court issued the TRO on October 12, 2006, the SEC has served the Unknown Purchasers pursuant to the alternative service of process authorized by the TRO. The SEC is also moving aggressively to procure information regarding the identity of the Unknown Purchasers by working with the Swiss authorities, and has advised that, in that regard, has obtained the cooperation of Zurich Cantonal Bank, who has served process on counsel for one of the Unknown Purchasers.

Finally, the balance of the harms favors the SEC, who will be unable to secure appropriate relief in enforcement proceedings if the assets have already been moved beyond the jurisdiction of the United States courts. The public interest will accordingly be served by preserving the status quo.

III. CONCLUSION

For the reasons set forth above, the Court finds there is good cause to grant the SEC's request for an extension of the TRO and a rule to show cause why the asset freeze and other preliminary relief should not remain in place until the conclusion of this litigation.

An appropriate order will be entered.

AND IT IS SO ORDERED.

s/Eduardo C. Robreno

EDUARDO C. ROBRENO, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE	:	CIVIL ACTION
COMMISSION,	:	
	:	
Plaintiff,	:	NO. 06-4540
	:	
v.	:	
	:	
ONE OR MORE PURCHASERS OF	:	
CALL OPTIONS FOR THE COMMON	:	
STOCK OF CNS, INC.,	:	
	:	
Defendants.	:	

TEMPORARY RESTRAINING ORDER FREEZING ASSETS
AND GRANTING OTHER RELIEF AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

The Securities and Exchange Commission ("Commission") has applied for an extension of the temporary restraining order entered on October 12, 2006 (i) freezing certain proceeds generated through the insider trading alleged in the Complaint, (ii) providing for expedited discovery, (iii) authorizing alternative means for service of process, (iv) requiring defendants to provide identifying information, and (v) prohibiting the alteration or destruction of documents. The Commission also requests that an order be issued requiring the defendants (also referred to as "Unknown Purchasers") to show cause why the asset freeze and the other ancillary relief requested by the Commission should not remain in place until the conclusion of this litigation. Having considered the Commission's application, and being advised that the current custodians of the assets at issue, Swiss American Securities Inc.

("SASI") and National Financial Services LLC ("NFS"), have been notified of the Commission's application, the Court grants the Commission's application and orders as follows:

I.

It is hereby **ORDERED** that defendants and their officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including without limitation Swiss American Securities, Inc. ("SASI") and National Financial Services LLC ("NFS"), shall hold and retain within their control, and prevent any disposition, transfer or dissipation of, any proceeds currently in their possession, custody, or control from: (i) the sales of 430 October-30 call option contracts and 475 November-30 call option contracts on October 9 and 10 in the account maintained in the name of or for the benefit of the Credit Suisse; and (ii) from the sales of 195 October-30 call option contracts, 66 November-30 call option contracts, and 20 November-35 call option contracts on October 9 in the account maintained in the name of or for the benefit of Zurich Cantonal Bank.

II.

IT IS FURTHER ORDERED that (A) in addition to all other potential means of service, service of all pleadings, process, and papers in this litigation, including the summons, complaint, and

this Order, may be made by serving such documents on the following as agents of defendants: For defendants who directly or indirectly purchased call options at issue in this litigation through Swiss American Securities, Inc., service may be made on Swiss American Securities, Inc. For defendants who directly or indirectly purchased call options at issue in this litigation through National Financial Services LLC, service may be made on National Financial Services LLC or Prudential Equity Group LLC.; and that (B) in addition to all other potential methods of service, service on defendants, directly or through their agents or attorneys, may be by facsimile, overnight courier, mail, or any alternative permitted by Rule 4 of the Federal Rules of Civil Procedure, including letters rogatory, or as this Court may direct by further order.

III.

IT IS FURTHER ORDERED that each defendant shall submit the following identifying information to the Commission within five days following service of this Order on that defendant: (A) all names by which each defendant is known; defendant's business and residence addresses; defendant's post office box numbers, telephone numbers, and facsimile numbers; and defendant's nationality; and (B) each account held by that defendant with any financial institution or brokerage at any time between September 1, 2006, and October 15, 2006.

IV.

IT IS FURTHER ORDERED that in lieu of the time periods, notice provisions, and other requirements of Rules 26, 30, 33, 34, 36 and 45 of the Federal Rules of Civil Procedure, and the Local Rules of this Court, discovery shall proceed on the following expedited basis: (A) The Commission is authorized to take depositions upon oral examination subject to three days notice pursuant to Rule 30(a) of the Federal Rules of Civil Procedure; (B) All depositions in this action, unless properly noticed to take place elsewhere, shall be taken within the United States; (C) Pursuant to Rule 33(a) of the Federal Rules of Civil Procedure and Local Rule 33, defendants shall answer the Commission's written discovery, including interrogatories and requests for production, within three days of service of such discovery; (D) Pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, defendants shall produce all documents requested by the Commission within three days of service of such request; and (E) All written responses to the Commission's discovery requests shall be delivered to the Commission at 100 F Street, N.E., Washington, D.C. 20549-4010, to the attention of H. Michael Semler, Assistant Chief Litigation Counsel, or such other place as counsel for the Commission may direct in writing, by overnight delivery.

V.

IT IS FURTHER ORDERED that defendants and their officers, agents, servants, employees, and attorneys, including Swiss American Securities, Inc., National Financial Services LLC, and Prudential Equity Group LLC, are hereby restrained from destroying, mutilating, concealing, altering or disposing of any documents or other items, including any books, records, documents, agreements, correspondence, memos, and electronic data or communication in any form, relating to defendants' direct or indirect purchase or sale of options relating to the stock of CNS during the period September 1, 2006, through October 15, 2006.

The Order will expire as of October 30, 2006, unless extended by the Court.

VI.

IT IS FURTHER ORDERED that defendants or their attorneys shall appear before this Court at 9:00 a.m. on November 30, 2006, Courtroom 11A to show cause why this Court should not enter a preliminary injunction extending the asset freeze and other ancillary relief entered in this Order until a final adjudication of this case on the merits.

Date: 10/20/06

Time: 9:15 a.m.

s/Eduardo C. Robreno
Eduardo C. Robreno
United States District Judge